

REMARKS

Claims 1-43 are pending in the application. Claim 22 has been amended. Applicants respectfully request reconsideration of the outstanding rejections in view of the following amendment and remarks.

35. U.S.C. §103(a)

Claims 1-43 have been rejected under 35 U.S.C. §103(a) as being anticipated by U.S. Patent No. 5,630,049 to Cardoza et al. (Cardoza) in view of U.S. Patent No. 5,765,138 to Aycock et al. (Aycock). Claim 22 has been amended. Claims 1-43 are patentable over Cardoza in view of Aycock for at least the following reasons.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness. *In re Fine*, U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicants' claims 1 and 23 recite "receiving at a host system a request by a user system to execute supplier qualification and quality management software, wherein said software comprises a selection module, a qualification module, and a quality module." Cardoza discloses a system for remote testing and debugging of software (col. 2, lines 42-67). Unlike the debugging software in Cardoza, and the evaluation software in Aycock, the software of the Applicants invention comprises three independent modules: a selection

module, a qualification module, and a quality module (Applicants' claims 1 and 23) that provide electronic supplier qualification and quality management functions. Neither Cardoza nor Aycock disclose these features. Thus, Applicants respectfully contend that neither Cardoza nor Aycock, alone or in combination, teach or disclose each element of Applicants' claims 1 and 23 as discussed above.

Therefore, because neither Cardoza nor Aycock disclose or teach an element of the invention they cannot render the Applicant's claims unpatentable. Thus, Claim 1 and 23 are allowable, the rejections improper, and should be withdrawn. Applicants claims 2-21 are dependent on what should now be an allowable claim 1. Applicants' claims 24-43 are dependent upon what should now be an allowable claim 23. For at least these reasons, it is respectfully requested that the rejection of claims 2-21 and 24-43 be withdrawn.

Applicants claim 22 has been amended to overcome the rejection issued by the Examiner. For the reasons discussed with respect to claims 1 and 23, Applicants' claim 22 is patentable over Cardoza in view of Aycock. It is respectfully requested that the rejection of claim 22 be withdrawn.

Alternatively, assuming for the sake of argument, that the cited references are applicable, Applicant respectfully maintains that the Examiner has used an improper standard in arriving at the rejection of the above claims under section 103, by failing to provide any motivation for the suggested combination. "(E)ven assuming that all elements of an invention are disclosed in the prior art, an Examiner cannot establish obviousness by locating references that describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would have impelled one skilled in the art to do what the patent applicant has done." *Ex parte Levingood*, 28 U.S.P.Q. 1300 (Bd. Pat. App. Int. 1993). The references, when viewed by themselves and not in retrospect, must suggest the invention. *In Re Skoll*, 187 U.S.P.Q. 481 (C.C.P.A. 1975).

The explanation provided in the Office Action in this instance provides no justification or explanation for the suggested combination of the cited references. The rejection based on the suggested combination of references merely amounts to a compilation of the claimed elements without any suggestion or motivation for their

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combination. There are no teachings in the art or the cited references that would have motivated one skilled in the art to make the suggested combination. Each of the cited references is drawn to addressing very different concerns (e.g., Cardoza is directed to addressing remote testing of software for purposes of debugging, and Aycock relates to a system for evaluating potential vendors). Neither reference includes any teaching with respect to performing technology qualification, selecting suppliers using a development toolkit, performing part qualification, process change management activities including accessing supplier initiated proposed changes to a qualified part, and logging problems detected as set forth in the Applicants invention. Therefore, the Examiner has not made a *prima facie* case for obviousness under §103(a). Thus, Claims 1-43 are allowable, the rejections are improper, and they should be withdrawn.

Moreover, Applicant respectfully maintains that the Examiner has used an improper standard in arriving at the rejection of the above claims under section 103, based on improper hindsight which fails to consider the totality of Applicant's invention and to the totality of the cited references. More specifically, the Examiner has used Applicant's disclosure to select portions of the cited references to allegedly arrive at Applicant's invention. In doing so, the Examiner has failed to consider the teachings of the reference or Applicant's invention as a whole in contravention of section 103.

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In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicant's attorney hereby authorizes that such fee be charged to Deposit Account No. 50-0510.

Respectfully submitted,

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